93-1091

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

STATE OF SOUTH DAKOTA, BY AND THROUGH THE DEPARTMENT OF SOCIAL SERVICES EX REL. GAIL A. DOTSON, IN HER OWN BEHALF AND ON BEHALF OF JARED DOTSON, A MINOR CHILD,

Petitioner,

v.

MERYL D. SERR,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

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QUESTION PRESENTED

WHETHER A TWO-YEAR STATUTE OF LIMITATIONS ON PATERNITY ACTIONS MAY BE APPLIED TO SHIELD A PUTATIVE FATHER FROM SUIT, CONSISTENT WITH THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION?

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v.

MERYL D. SERR,

Respondent.

The Petitioner, State of South Dakota, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of South Dakota entered in the above-entitled proceeding on October 6, 1993.

OPINIONS BELOW

The opinion of the South Dakota Supreme Court was delivered on October 6, 1993; it

appears at 506 N.W.2d 421 (S.D. 1993) and is printed in the Appendix at A-2. The Findings of Fact and Conclusions of Law of the circuit court relating to the statute of limitations defense are set out at Appendix A-21, and the accompanying Order Denying Motion to Dismiss is set out at Appendix A-29. Findings of Fact and Conclusions of Law on the merits are set out at Appendix A-32 and the Judgment of Paternity and Support is set out at Appendix A-43. Additional Findings of Fact and Conclusions of Law were thereafter entered, Appendix A-46, and an Amended Judgment of Paternity and Support was entered on the same day. Appendix A-54. A Second Amended Judgment of Paternity and Support was subsequently entered. Appendix A-58.

JURISDICTIONAL STATEMENT

The opinion of the South Dakota Supreme Court was rendered on October 6, 1993. State v. Serr, 506 N.W.2d 421 (S.D. 1993); Appendix

at A-2. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, art. XIV, § 1 states:

> No State . . . shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statute at issue here, SDCL 25-8-9, as originally enacted in 1939 (SDC 1939 § 37.2131) and as effective in 1978 states[1]:

> Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in

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[1]A two-year statute of limitations on enforcing the child support obligation was enacted in 1923 (SL 1923, ch. 295, § 32) and was amended in 1931 (SL 1931, ch. 263) to provide that the time spent by the putative father outside the state would not be included in the computation. The 1939 version referred to above did not include the language which had been added in 1931.

> writing or by the furnishing of support.

SDCL 25-8-9, as revised in 1983 (1983 S.D. Sess. L. ch. 207, § 2) states:

> Proceedings to enforce the obligation of the father may not be brought after the lapse of more than six years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support.

SDCL 25-8-9, as revised in 1986 (1986 S.D. Sess. L. ch. 218, § 57) states:

> Proceedings to establish paternity and enforce the obligation of the father may be brought at any time prior to the eighteenth birthday of the child. The provisions of this section apply to all children who have been born since July 1, 1968.

SDCL 25-8-9, as revised in 1989 (1989 S.D. Sess. L. ch. 222) states:

> Proceedings to establish paternity and enforce the obligation of the father may be brought at any time before the eighteenth birthday of the child.

STATEMENT OF THE CASE

In this case, the State of South Dakota, on behalf of a minor child, seeks review of the determination of the Supreme Court of the State of South Dakota that a two-year statute of limitations in effect in 1978 could bar a paternity action against a putative father brought slightly less than thirteen years after the birth of the child.

The relevant facts are as follows. On June 6, 1978, Gail Dotson gave birth to a son, Jared Dotson, in Pennsylvania. State v. Serr, 506 N.W.2d at 422; Appendix A-3. The putative father, Respondent Meryl D. Serr, had no contact with Ms. Dotson or the child until 1988 or 1989 when Ms. Dotson made contact with Mr. Serr by way of a letter and photograph of Jared Dotson. State v. Serr, 506 N.W.2d at 422; Appendix A-3. In December of 1989, Ms. Dotson began to receive Aid to Dependant Children in Pennsylvania and applied for child

support services under Pennsylvania's Revised Uniform Reciprocal Enforcement of Support Act. A Pennsylvania court determined that Mr. Serr could owe a duty of support to Jared Dotson. State v. Serr, 506 N.W.2d at 422; Appendix A-4. Thereafter, pursuant to South Dakota's Revised Reciprocal Enforcement of Support Act, paternity petitions were initiated in South Dakota circuit court to establish Mr. Serr's paternity and to compel the support. Id.

The circuit court found that Ms. Dotson and Mr. Serr had regular sexual intercourse during the relevant time period, see Appendix A-38, and also found that the Defendant, Mr. Serr, was the "biological father of Jared Dotson." Appendix A-39. The circuit court also concluded that the "statute of limitations is not applicable to the Defendant as an affirmative defense." Appendix A-41.

Defendant did not take issue with the circuit court's factual findings in the state Supreme Court, see Appellant's Brief, Appendix A-84, but did appeal on legal grounds and the state Supreme Court reversed. As noted above, when the minor child was born in 1978, South Dakota statute provided a two-year statute of limitations on a paternity action "unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support." SDCL 25-8-9 (as effective in 1978)(set out above at p. 3). The Supreme Court impliedly held, in a brief decision, that the two-year statute of limitations, as it existed in 1978, barred any action for paternity or support two years after the birth of the child. See State v. Serr, 506 N.W.2d at 422-423; Appendix A-4 to A-5, A-7. The Court further held that subsequent South Dakota legislation which extended the time for bringing paternity

actions would not be construed to be retroactive because revival of "previously time-barred claims impermissibly interferes with a defendant's vested rights and violates due process," State v. Serr, 506 N.W.2d at 423; Appendix A-8 to 9, and because the legislative intent to have the statutes apply retroactively did not plainly appear. State v. Serr, 506 N.W.2d at 423; Appendix A-8.

FEDERAL QUESTION PRESENTED BELOW

The constitutional question relating to the statute of limitations was adequately raised in the state Supreme Court.[2] Mr. Serr, as Appellant in the South Dakota Supreme Court, argued that the State and "the trial court below relied heavenly [sic] on the Supreme Court decision in the case of Pickett

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[2]See, as to the proceedings in the circuit court, an excerpt from the State's trial brief at Appendix A-74 and especially A-76, and State ex rel. Weidner v. Tyburec (1st Jud. Cir. August 3, 1989) at A-64, which was relied upon in the State's trial brief.

v. Brown, 462 U.S. 1 . . ." Appellant's Brief; Appendix A-90. Mr. Serr also argued that the South Dakota statute was distinguishable from the Tennessee statute found "violative of the equal protection clause" in Pickett. Appendix A-91.

The State, as Appellee before the South Dakota Supreme Court, argued that the "Equal Protection rights concerning a child's interest should be paramount to a putative father's claim of due process, by applying SDCL 25-8-9 retroactively." Appendix A-108. The State also quoted the Mills v. Habluetzel, 456 U.S. 91 (1982), "standard in the context of paternity actions." See Appendix A-111 to A-112.

Perhaps most significantly for present purposes, the State set out the argument of Mr. Serr that the "1978 version of SDCL 25-8-9 [the two-year statute of limitations] should apply because the State and its citizenry need

to be protected from, 'the burden of litigating state [sic] claims.'" Appendix A-112. The State refuted this argument through an analysis of Clark v. Jeter, noting that the case had held the Pennsylvania six-year statute of limitations unconstitutional, Appendix A-112, and briefly comparing the 1978 South Dakota statute with Pennsylvania's. See Appendix A-113, n. 1. Finally, the State quoted Pickett, 406 U.S. at 7-8, which in turn quoted Weber v. Aetna Casualty and Surety Co., 406 U.S. 164, 175 (1972), including language that "the Equal Protection Clause does enable us to strike down discriminatory laws relating to the status of birth. . . ." Appendix A-115.

The South Dakota Supreme Court necessarily had to reject this constitutional argument to come to the conclusion that the 1978 two-year statute of limitations could constitutionally be applied in this case. See

State v. Serr, 506 N.W.2d at 422, 423; Appendix A-5, A-7.

Other indicators also make it clear that the South Dakota Supreme Court considered whether the two-year statute of limitations in effect in 1978 was constitutional. The three members of the majority stated:

> Dotson did not specifically raise any constitutional issues on her own behalf. However, her brief discussed several U.S. Supreme Court decisions concerning Equal Protection and paternity/statute of limitation issues, all of which have been distinguished by this writing and our reliance upon and discussion in Hove.

State v. Serr, 506 N.W.2d at 423 n. 1; Appendix A-9, n. 1.

The majority particularly drew attention to Pickett v. Brown, 462 U.S. 1 (1983) asserting (incorrectly) that it had not revived a cause of action which was previously barred. State v. Serr, 506 N.W.2d at 423. Appendix A-9. The state Supreme Court further

distinguished Pickett on the alleged grounds that "the interested parties did not have adequate time to obtain child support. We do not face such an assertion here." State v. Serr, 506 N.W.2d at 423; Appendix A-9 and A-10.

Two members of the five-member court dissented separately. Justice Wuest stated:

> In the present case, the majority opinion fails to address the constitutional issues raised by appellee Dotson. As I have previously stated, the South Dakota statute of limitations fails the intermediate scrutiny test and violates the Equal Protection Clause of the Fourteenth Amendment. Therefore, the provision is void, and offers no protection to Serr.

State v. Serr, 506 N.W.2d at 423; Appendix A-11. (Wuest, J., dissenting) (emphasis added).

Justice Sabers, also in dissent, stated:

> As clearly outlined in Pickett . . . SDCL 25-8-9 was unconstitutional at all times prior to 1986 because it violated the Equal Protection Clause of the Fourteenth Amendment.

State v. Serr, 506 N.W.2d at 425; Appendix A-18. (Sabers, J., dissenting)(emphasis added).

The State, therefore, submits that the constitutional question was adequately raised below.

REASON FOR GRANTING THE WRIT.

THE DECISION OF THE SOUTH DAKOTA SUPREME COURT CONFLICTS WITH THE DECISIONS OF THIS COURT.

A. The decisions of this Court preclude the application of a two-year statute of limitations to paternity claims.

In Weber v. Aetna Casualty and Surety Company, 406 U.S. 164, 175 (1972), this Court said:

> The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust.

> Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual--as well as an unjust--way of deterring the parent.

In Clark v. Jeter, 486 U.S. 456, 461 (1988), this Court quoted part of this language in explaining its adoption of the "intermediate scrutiny" test to determine whether a statutory classification which discriminated on the basis of illegitimacy was valid under the Equal Protection Clause. The Court explained that to pass muster under the intermediate test "a statutory classification must be substantially related to an important governmental objective." Id.

Pursuant to the intermediate scrutiny analysis, this Court has invalidated a one-year statute of limitations on paternity suits, see Mills v. Habluetzel, 456 U.S. 91

(1982); a two-year statute of limitations on paternity suits, Pickett v. Brown, 462 U.S. 1 (1983); and a six-year statute of limitations on paternity suits, Clark v. Jeter, 486 U.S. at 464.

The Court also developed in Mills a "particular framework for evaluating equal protection challenges to statutes of limitations that apply to suits to establish paternity. . . ." Clark v. Jeter, 486 U.S. at 461-462. According to the Mills Court:

> First, the period for obtaining support . . . must be sufficiently long in duration to present a reasonable opportunity for those with an interest in such children to assert claims on their behalf. Second, any time limitation placed on that opportunity must be substantially related to the State's interest in avoiding the litigation of stale or fraudulent claims.

Mills v. Habluetzel, 456 U.S. at 99-100.

Both prongs of this analysis must be satisfied for a statute to pass constitutional

muster. See generally, Clark v. Jeter, 486 U.S. at 464.

1. The two-year limitations period, provided in the South Dakota statute in effect in 1978, is not sufficiently long to provide a reasonable opportunity to bring suit.

In Pickett v. Brown, 462 U.S. 12-13, this Court applied the Mills test and found that Tennessee's two-year statute of limitations did not provide a reasonable opportunity to bring suit. The Tennessee statute in Pickett, like South Dakota's statute, provided that the limitations period did not run if the father "has provided support for the child or has acknowledged his paternity in writing." See Pickett v. Brown, 462 U.S. at 12; SDCL 25-8-9 (as effective 1978)(set out above at p. 3).

The Tennessee statute, however, was more generous than the South Dakota statute at issue in that Tennessee also allowed suits to be brought "by the State or by any person at

any time prior to a child's eighteenth birthday if the child is, or is liable to become, a public charge." Pickett, 462 U.S. at 12. South Dakota had no corresponding clause in 1978.

Despite the exceptions in the Tennessee statute, this Court found that its "2-year limitations period severely restricts [an illegitimate child's] right to paternal support." Id. The Court recognized that the mother's "'continuing affection for the child's father, [along with] a desire to avoid disapproval . . . or emotional strain and confusion' . . . may inhibit a mother from filing a paternity suit on behalf of the child within two years after the child's birth." Pickett, 462 U.S. at 12-13, quoting Mills, 456 U.S. at 100. The Court concluded:

> These considerations compel a conclusion that the 2-year limitations period does not provide illegitimate children with 'an

> adequate opportunity to obtain support.'

Pickett, 462 U.S. at 13, quoting Mills, 456 U.S. at 100.

South Dakota's 1978 statute fails the Pickett test. It provides for a two-year statute of limitations with certain exceptions that were also found in the Tennessee statute. Indeed, the 1978 South Dakota statute provides even fewer opportunities to establish paternity than the Tennessee statute at issue in Pickett because the South Dakota statute did not contain the exception regarding the likelihood of a child becoming a public charge.

2. The two-year limitation period is not justified by the interest in avoiding litigation of stale or fraudulent claims.

Pickett v. Brown, 462 U.S. at 13, held that a two-year time limitation was not "substantially related to the State's interest in avoiding the litigation of stale or fraudulent claims." The Court found that the two years allowed by the Tennessee statute amounted to a "restriction effectively extinguishing the support rights of illegitimate children that cannot be justified by the problems of proof surrounding paternity actions." Id. The Court also found that the State's interest in avoiding stale or fraudulent claims could not justify the two-year statute of limitations in light of other Tennessee statutes which provided for longer statutes of limitations in similar actions. In particular, an eighteen-year statute of limitations applied to illegitimate children

in Tennessee who were likely to become public charges, and Tennessee provided that most other actions were tolled during the child's minority. Id. at 14-15. In addition, the Court found that the state's interest in a short statute of limitations "had become more attenuated" because of "scientific advances in blood testing. . . ." Id. at 17.

Clark v. Jeter reinforces and indeed broadens Pickett in that it invalidates the six-year Pennsylvania statute of limitations on paternity actions.[3] Clark v. Jeter, 486

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[3]It is of note that, according to State ex rel. Stearns v. Blume, 333 N.W.2d 721 (S.D. 1983), paternity actions may be brought as "common law" actions to enforce the duty of a father to support his minor child and a six-year statute of limitations would apply. This point is not of decisive relevance here, however, because (1) even if a six-year statute of limitations were before the court, it had expired and offers no assistance to the Petitioner here or those in a similar situation; (2) this Court has, of course, invalidated Pennsylvania's six-year statute of limitations in Clark v. Jeter; and (3) the action was not brought as a "common law"

(continued...)

U.S. at 464, pointed out that the six-year statute of limitations in Pennsylvania could not be found to be "substantially related to Pennsylvania's interest in avoiding the litigation of stale or fraudulent claims" because in "a number of circumstances, Pennsylvania permits the issue of paternity to be litigated more than six years after the birth of an illegitimate child." Thus, Pennsylvania allowed an action to enforce the obligation of the father after the six-year period had expired in the event the father had furnished support; in such cases, an action could be brought for two years after the support payment. Id. In addition, Pennsylvania's intestacy statute placed no limit on when paternity could be litigated, as long as a child could show clear and

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[3](...continued)
action, but as an action under SDCL ch. 25-8 and that is of critical importance to the state court; see Blume, 333 N.W.2d at 724.

convincing evidence to establish paternity. Id. Furthermore, this Court noted in Clark that the Pennsylvania Legislature had recently "enacted a statute that tolls most other civil actions during the child's minority." Id.

Clark v. Jeter, 486 U.S. at 465, also recognized that "increasingly sophisticated" genetic testing allowed very high confidence in excluding prospective fathers regardless of the delay in the taking of the blood test.

Under the analysis of Pickett and Clark, South Dakota's two-year statute of limitations is not "substantially related" to the interest in avoiding stale or fraudulent claims.[4]

First, as in Pickett and Clark, the "stale" claims argument is belied by the fact

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[4]The State, of course, denies Mr. Serr's interest in this issue and there is a significant issue whether he has standing to raise the State's interest in this case. Mr. Serr's interest in avoiding "stale" litigation is confined to his own alleged due process right discussed below.

that most civil actions in South Dakota are now, and were at the time of the 1978 statute, tolled "within the age of minority" SDCL 15-2-22(1). Indeed, unlike Clark v. Jeter, the South Dakota statute regarding most civil actions was already in effect at the time of the 1978 statute, making the claim to constitutional validity of the South Dakota statute even weaker.

Second, the State's interest in preventing stale claims is further undermined by the 1978 statute itself which does not apply to proceedings to enforce the obligation of (1) a father for whom paternity has been judicially established or (2) a father who has acknowledged paternity in writing or through the furnishing of support. SDCL 25-8-9 (as effective in 1978)(set out above at p. 3).

Third, the South Dakota statutes relating to intestacy proceedings were amended in 1991 to provide that an illegitimate child could

inherit from his declared father on the basis of clear and convincing proof after his death. SDCL 29-1-15.1.

Fourth, SDCL 25-8-9, the statute at issue here, was amended in 1983 to provide for a six-year statute of limitations, 1983 S.D. Sess. L. ch. 207, § 2, (set out above at p. 3) and amended again in 1986 to provide for an eighteen-year statute of limitations. 1986 S.D. Sess. L. ch. 218, § 57 (set out above at p. 4). A further amendment in 1989 removed the explicit retroactivity provision, 1989 S.D. Sess. L. ch. 222, (set out above at p. 4) but the Legislature, at least in 1986, apparently saw no "stale claim" impediment to an eighteen-year statute of limitations on paternity suits.

Finally, Clark emphasizes that the purported interest in avoiding stale evidence has been undermined by "increasingly sophisticated tests for genetic markers

[which] permit the exclusion of over 99% of those who might be accused of paternity, regardless of the age of the child." Clark v. Jeter, 486 U.S. at 465. Mr. Serr appealed to the South Dakota Supreme Court solely on the legal issues and therefore no transcript of the circuit court proceedings was ordered. See generally, Mr. Serr's Appellant's Brief, Appendix A-84. The State, however, is informed by the State's attorney, trial counsel below, that no scientific evidence of paternity was admitted into evidence in this case. Paternity was, of course, found to exist, Findings of Fact and Conclusions of Law, Appendix A-39, and no appeal was taken from this factual finding by Mr. Serr.[5]

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[5]Mr. Serr appealed to the South Dakota Supreme Court solely on the legal issues and no transcript of the circuit court proceedings was ordered. See generally, Mr. Serr's Appellant's Brief, Appendix A-84. The State, however, is informed by the State's Attorney, trial counsel below, that no scientific

(continued...)

Application of this Court's analysis, in Mills, Pickett and Clark, to the two-year statute of limitations in effect in South Dakota in 1978 demonstrates that the South Dakota statute is inconsistent with the Equal Protection Clause of the United States Constitution.[6]

B. The due process right of the putative father does not overcome the equal protection rights of the illegitimate child.

The South Dakota Supreme Court essentially held that when the Legislature had established a statute of limitations, and when the period of time under the statute had run,

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[5](...continued)
evidence of paternity was admitted into evidence in this case. (Paternity was, of course, found to exist, Findings of Fact and Conclusions of Law, Appendix A-39, and no appeal was taken from this factual finding by Mr. Serr.)

[6]Indeed, the patent inconsistency of the South Dakota statutes with Mills, Pickett and Clark may merit consideration of summary reversal of the decision below.

an attempt to revive it by a subsequent statute "impermissibly interferes with a defendant's vested rights and violates due process." State v. Serr, 506 N.W.2d at 423; Appendix A-8 to A-9.

The decision of the state Supreme Court was clearly incorrect under Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945). In Chase, certain non-registered securities had been sold in Minnesota in 1929. The six-year statute of limitations ran in 1935 and suit was commenced in 1937. The defendant asserted the statute of limitations as a defense but during the pendency of the litigation the Legislature effectively extended the statute of limitations. The defendant argued that extension of the statute of limitations violated the Due Process Clause. See Chase, 325 U.S. at 309, 311. This Court rejected defendant's claim, affirming its prior holding in Campbell v. Holt, 115 U.S. 620 (1885):

> [W]here lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar. This has long stood as a statement of the law of the Fourteenth Amendment, and we agree with the court below that its holding is applicable here and fatal to the contentions of appellant.

Chase, 325 U.S. at 311-312. The Court held that Campbell v. Holt was "sound and should not be overruled," because the "Fourteenth Amendment does not make an act of state legislation void merely because it has some retrospective operation." Id. at 315. The Court noted that the defenses raised by the defendant had not been undertaken on the "assumption that the old rule would be continued." Id. at 316. The Court concluded:

> Whatever grievance appellant may have at the change of policy to its disadvantage, it had acquired no immunity from this suit that has

> become a federal constitutional right.

Id. See also Electrical Workers v. Robbins & Myers, Inc., 429 U.S. 229, 243-244 (1976); see generally, G.D. Searle & Co. v. Cohn, 455 U.S. 404, 408 (1982).

It follows from Chase that, for the purpose of constitutional analysis, a statute of limitations goes only to remedy and not to the creation of a substantial right protectable, at least under ordinary circumstances, by the due process clause. Therefore, the state Supreme Court was wrong when it concluded that the federal due process clause mandated application of the expired two-year statute of limitations in this case.

Furthermore, this Court's holdings in Clark, Pickett and Mills preclude a finding that the putative father's due process right supersedes an illegitimate child's right under the Equal Protection Clause to a determination

of paternity and support. See generally Mills, 456 U.S. at 101, n. 9 (citing Chase Security Corp. v. Donaldson, 325 U.S. at 314). Acceptance of the South Dakota Supreme Court's decision here would surely undermine, perhaps fatally, those decisions.

3. The number of children affected by this decision is significant.

The judgment of the South Dakota Supreme Court effectively denies children born out of wedlock between 1981 and 1976 the right to bring a paternity action.

A total of approximately 8,600 children (less, of course, any children who have already somehow established paternity) could be harmed by this decision.[7]

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[7]The number of children affected is as follows:

Calendar year	Out of wedlock births
1976	1391
1977	1498
1978	1524

(continued...)

Not only could South Dakota children be harmed by this decision, but the State of South Dakota's ability to provide support for those children could also be undermined because of the potential inconsistency of South Dakota law with the Federal Child Support Enforcement Amendments passed by Congress in 1984. See 42 U.S.C. §§ 601, 666

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[7](...continued)

1979	1659
1980	1782
1981	865 (see below)

Table compiled from the following annual reports, all of which were authored by South Dakota Department of Health, Vital Records Program: "South Dakota Vital Statistics 1981" p. 11; "South Dakota Vital Statistics" 1980" p. 11; "South Dakota Vital Statistics" 1979" p. 13; "South Dakota Vital Statistics" 1978" p. 22; "South Dakota Vital Statistics" 1977" p. 35; "South Dakota Vital Statistics" 1976" p. 31; "South Dakota Vital Statistics"

(The 1983 statute, which went into effect July 1, 1983, 1983 S.D. Sess. L. ch. 207 § 2 (set out above at p. 3), would preserve the rights of children born within two years of that effective date, i.e. about one-half of the children born in 1981; the 1981 number used above has been adjusted accordingly.)

(1988). See also 45 C.F.R. § 302.70(5)(i). It may well be that South Dakota will now be threatened with the loss of funding because of this noncompliance.

More important, of course, is that as a result of the state Supreme Court decision in State v. Serr, children are not being treated equally under the law.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests this Court grant the petition for writ of certiorari.

Respectfully submitted,

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